

Department of Health
Notice of Rulemaking Hearing
Board of Podiatric Medical Examiners
Division of Health Related Boards

There will be a hearing before the Tennessee Board of Podiatric Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-3-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 28th day of December, 2005.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 1155-2-.01, Definitions, is amended by deleting the introductory language and substituting instead the following language, so that as amended the new introductory language shall read:

1155-2-.01 Definitions - As used in this chapter and in chapters 1155-3 and 1155-4, the following terms and acronyms shall have the following meanings ascribed to them:

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-125, and Public Chapter 380 of the Public Acts of 2005.

Rule 1155-2-.03, Necessity of Certification, is amended by adding the following language as new paragraph (3) and renumbering the present paragraph as paragraph (4):

- (3) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles and or initials "Podiatrist," "Podiatric Physician," "Doctor of Podiatry," "Doctor of Podiatric Medicine," "Doctor of Podiatric Medicine and Surgery," or "D.P.M." and to practice as a licensed podiatrist, as defined in T.C.A. §§ 63-3-101. Violation of this rule or T.C.A. § 63-3-119 (a) (15) regarding use of titles of shall constitute unprofessional conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-101, 63-3-106, 63-3-107, 63-3-119, and Public Chapter 467 of the Public Acts of 2005.

Rule 1155-2-.11, Retirement and Reactivation of License, is amended by deleting paragraph (5) in its entirety.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-116, and Public Chapter 228 of the Public Acts of 2005.

Rule 1155-2-.12, Continuing Education, is amended by deleting paragraph (1) but not its subparagraphs, and substituting instead the following language, so that as amended, the new paragraph (1) but not its subparagraphs shall read:

- (1) The Board requires each licensed podiatrist to complete fifteen (15) clock hours of continuing education each calendar year (January 1 – December 31).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-116, and Public Chapter 228 of the Public Acts of 2005.

Rule 1155-2-.19 Board Members, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (1) (c) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (6) and (7), so that as amended, the new catchline, the new subparagraph (1) (c), and the new paragraphs (6) and (7) shall read:

1155-2-.19 Board Meetings, Officers, Consultants, Records, Declaratory Orders, Advisory Rulings and Screening Panels.

- (1) (c) A majority of the members of the Board shall at all times constitute a quorum.

- (6) Advisory Rulings - Any person who is affected by any matter within the jurisdiction of the Board and who holds a license or certificate issued pursuant to

Chapter 3 of Title 63 of the Tennessee Code Annotated, may submit a written request for an advisory ruling subject to the limitations imposed by T.C.A. § 63-3-202 (b) (2). The procedures for obtaining and issuance of advisory rulings are as follows:

- (a) The licensee or certificate holder shall submit the request to the Board Administrative Office on the form contained in paragraph (6)(e) providing all the necessary information; and
- (b) The request, upon receipt, shall be referred to the Board's administrative staff for research, review and submission of a proposed ruling to the Board for its consideration at the next meeting after the draft ruling has been approved by the Board's consultant and advisory attorney; and
- (c) The Board shall review the proposed ruling and either make whatever revisions or substitutions it deems necessary for issuance or refer it back to the administrative staff for further research and drafting recommended by the Board; and
- (d) Upon adoption by the Board the ruling shall be transmitted to the requesting licensee. The ruling shall have only such affect as is set forth in T.C.A. § 63-3-202 (b) (2).
- (e) Any request for an advisory ruling shall be made on the following form, a copy of which may be obtained from the Board's Administrative Office:

Board of Podiatric Medical Examiners
Request for Advisory Ruling

Date: _____

Licensee's Name: _____

Licensee's Mailing Address: _____

Licensee's E-Mail Address: _____

License Number: _____

1. The specific question or issue for which the ruling is requested:

2. The facts that gave rise to the specific question or issue:

3. The specific statutes and/or rules which are applicable to the question or issue:

Licensee's Signature: _____

Mail or Deliver to: Administrator
Board of Podiatric Medical Examiners
First Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, Tennessee 37247-1010

- (7) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-107, 4-5-202, 4-5-204, 63-1-124, 63-1-138, 63-3-106, 63-3-119, and Public Chapters 234 and 380 of the Public Acts of 2005.

Rule 1155-2-.21 Podiatric Professional Corporations and Podiatric Professional Limited Liability Companies, is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new paragraphs (1), (2), (3), and (5) shall read:

- (1) Podiatric Professional Corporations (PPC) – Except as provided in this rule Podiatric Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
- (a) Filings – A PPC need not file its Charter or its Annual Statement of Qualifications with the Board.

- (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic PPC doing business in Tennessee:
 - 1. Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 or licensed in another state; and/or
 - 2. A foreign or domestic general partnership, PPC or PPLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 to practice podiatry in Tennessee or podiatrists, orthotists, prosthetists, and pedorthists licensed by other states, or composed of entities which are directly or indirectly owned by such licensed podiatrists; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated, Sections 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in a PPC or be a member or holder of financial rights in a PPLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).
- (c) Officers and Directors of Podiatric Professional Corporations -
 - 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a podiatric professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:
 - (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.
 - 2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a podiatric

professional corporation as limited by T.C.A. § 48- 101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a PPC.

(d) Practice Limitations

1. Engaging in, or allowing another podiatric incorporator, shareholder, officer, or director, while acting on behalf of the PPC, to engage in, podiatric practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the professional ethics enumerated in Rule 1155-2-.13 and/or Tennessee Code Annotated, Section 63-3-119 (a) (4).
2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a PPC.
3. Nothing in these rules shall be construed as prohibiting a PPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent podiatric judgment by the podiatric incorporators, directors, officers, shareholders, employees or contractors of the PPC who are practicing podiatry as defined by Tennessee Code Annotated, Section 63-3-101.
4. Nothing in these rules shall be construed as prohibiting a podiatrist from owning shares of stock in any type of professional corporation other than a PPC so long as such ownership interests do not interfere with the exercise of independent podiatric judgment by the podiatrist while practicing podiatry as defined by Tennessee Code Annotated, Section 63-3-101.

(2) Podiatric Professional Limited Liability Companies (PPLLC) – Except as provided in this rule Podiatric Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapter 248 or Public Chapter 286 of the Public Acts of 2005.

- (a) Filings – Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
- (b) Membership – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the

Public Acts of 2005 only the following may be members or holders of financial rights of a foreign or domestic PPLLC doing business in Tennessee:

1. Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 or licensed in other states; and/or
2. A foreign or domestic general partnership, PPC or PPLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 to practice podiatry in Tennessee or podiatrists, orthotists, prosthetists, and pedorthists licensed by other states or composed of entities which are directly or indirectly owned by such licensed podiatrists; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated, Sections 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in a PPC or be a member or holder of financial rights in a PPLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).

(c) Managers, Directors or Governors of a PPLLC

1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a podiatric professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer
2. Only persons who are eligible to form or become members or holders of financial rights of a podiatric professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of a PPLLC.

(d) Practice Limitations

1. Engaging in, or allowing another podiatrist member, officer, manager, director, or governor, while acting on behalf of the PPLLC, to engage in, podiatric practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the professional ethics enumerated in Rule 1155-2-.13 and/or Tennessee Code Annotated, Section 63-3-119 (a) (4).
 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a PPLLC.
 3. Nothing in these rules shall be construed as prohibiting a PPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent podiatric judgment by the podiatrist members or holders of financial rights, governors, officers, managers, employees or contractors of the PPLLC who are practicing podiatry as defined by Tennessee Code Annotated, Section 63-3-101.
 4. Nothing in these rules shall be construed as prohibiting a podiatrist from being a member of any type of professional limited liability company other than a PPLLC so long as such membership interests do not interfere with the exercise of independent podiatric judgment by the podiatrist while practicing podiatry as defined by Tennessee Code Annotated, Section, Section 63-3-101.
 5. All PPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 or Public Chapter 286 of the Public Acts of 2005, to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a PPC or a PPLLC has violated or is violating any provision of Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the PPC and/or PPLLC or the secretary of state if a violation of

the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005 occurs.

- (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the PPC and/or PPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the PPC and/or PPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the PPC and/or PPLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
 - (f) If, after the proceeding the Board finds that a PPC and/or PPLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1) - (3) and/or 48-248-409 (1)-(3) and/or Public Chapter 286 of the Public Acts of 2005.
- (5) The authority to own shares of stock or be members or holders of financial rights in a PPC or a PPLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-3-106, 63-3-110, 63-3-119, and Public Chapters 286 and 380 of the Public Acts of 2005.

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Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010 615-532-4397.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Board of Podiatric Medical Examiners.

Robbie H. Bell, Director
Health Related Boards

Subscribed and sworn to before me this the 6th day of October, 2005.

Notary Public

My commission expires on the 25th day of March, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the ____ day of _____, 2005.

Riley C. Darnell
Secretary of State

By: _____